

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

JETBLUE AIRWAYS CORPORATION and
SPIRIT AIRLINES, INC.,

Defendants.

Civil Action No. 1:23-cv-10511-WGY

**JOINT MOTION TO IMPOUND PORTIONS OF THE
PARTIES' EVIDENCE IN SUPPORT OF MOTIONS *IN LIMINE***

Pursuant to Local Rule 7.2 and the Stipulated Protective Order entered by the Court on March 21, 2023 (ECF No. 66), the Parties hereby move this Court for an Order impounding portions of evidence in support of three motions *in limine*. In support of this Joint Motion to Impound, the parties state as follows:

1. On Friday, September 8, 2023, the Parties exchanged lists of potential motions *in limine* and then participated in a videoconference to meet and confer regarding the proposed motions *in limine*.

2. The Parties have worked collaboratively to identify for each other confidential business information that may be appropriate for impoundment. The Parties have filed three motions *in limine* that do not require any impoundment.

3. **Confidential Materials Related to Expert Richard Scheff:** Plaintiffs are filing a motion *in limine* regarding the expert opinions of Defendants' expert Richard Scheff. In support of their motion, Plaintiffs are filing excerpts from Mr. Scheff's expert report that contain

confidential business information, the disclosure of which would cause irrevocable harm to Defendants, including: Defendants' fleet plans, the combined network plan, and certain details regarding modeling of the proposed merger. Plaintiffs do not endorse or adopt Defendants' position regarding the confidential information contained in these excerpts. If this Motion is denied, in whole or in part, Plaintiffs will file the excerpts from Mr. Scheff's report to the extent the Court determines they cannot be properly shielded from the public.

4. **Confidential Materials Related to Expert Nicholas Hill:** Plaintiffs are filing a motion *in limine* regarding the expert opinions of Defendants' expert Nicholas Hill. In support of their motion, Plaintiffs are filing excerpts from Dr. Hill's expert report. While most of these excerpts are being publicly filed, Defendants take the position, which Plaintiffs do not endorse or adopt, that one excerpt contains confidential business information regarding the combined network plan and JetBlue's projections for future growth, the disclosure of which would cause irrevocable harm to Defendants. If this Motion is denied, in whole or in part, Plaintiffs will file this excerpt from Dr. Hill's report to the extent the Court determines it cannot be properly shielded from the public.

5. **Confidential Materials Related to Expert Tasneem Chipty:** Defendants are filing a motion *in limine* regarding the expert opinions of Plaintiffs' expert Tasneem Chipty. In support of their motion, Defendants are filing excerpts from Dr. Chipty's expert reports that contain confidential business information, the disclosure of which would cause irrevocable harm to Defendants, including: Defendants' fleet plans, the combined network plan, and certain details regarding modeling of the proposed merger. Plaintiffs do not endorse or adopt Defendants' position regarding the confidential information contained in these excerpts, except insofar as these excerpts reflect confidential information of third-parties who have not received notice and an

opportunity to object to the public filing of material they have designated as confidential and/or highly confidential. Such third-party information is a small portion of the designated material and the Parties request that if the Court denies this Motion with respect to the excerpts from this report, that third-party confidential material be redacted from the public filing.

6. **Confidential Materials Related to Expert Gautam Gowrisankaran:** Defendants are filing a motion *in limine* regarding the expert opinions of Plaintiffs' expert Tasneem Chipty. In support of their motion, Defendants are filing excerpts from Dr. Gowrisankaran's expert report that contain confidential business information, the disclosure of which would cause irrevocable harm to Defendants, including: Defendants' fleet plans, the combined network plan, and certain details regarding modeling of the proposed merger. Plaintiffs do not endorse or adopt Defendants' position regarding the confidential information contained in these excerpts, except insofar as these excerpts reflect confidential information of third-parties who have not received notice and an opportunity to object to the public filing of material they have designated as confidential and/or highly confidential. Such third-party information is a small portion of the designated material and the Parties request that if the Court denies this Motion with respect to the excerpts from this report, that third-party confidential material be redacted from the public filing.

7. The Parties thus request that an Order be issued by the Court and that order remain in effect until such time that it be lifted by further order of the Court and that the papers be kept in the Clerk's non-public information file during any post-impoundment period.

8. The Parties will serve copies of the unredacted document on opposing counsel and will hand-deliver the papers to the Court. The Parties will also work together this week to prepare redacted versions of the impounded exhibits containing portions from the expert reports that are being filed in connection with the motions *in limine*.

WHEREFORE, the Parties respectfully request that this Court grant their Joint Motion to Impound until further order of the Court.

Dated: September 11, 2023

Respectfully submitted,

/s/ Edward W. Duffy

Edward W. Duffy

Don P. Amlin

U.S. Department of Justice, Antitrust Division

450 Fifth Street, NW, Suite 8000

Washington, DC 20530

Phone: 202-812-4723

Facsimile: 202-307-5802

E-mail: edward.duffy@usdoj.gov

Attorneys for Plaintiff United States of America

/s/ William T. Matlack

William T. Matlack (MA Bar No. 552109)

Office of the Attorney General

One Ashburton Place, 18th Floor

Boston, MA 02108

Telephone: (617) 727-2200

Email: William.Matlack@mass.gov

Attorney for Plaintiff Commonwealth of Massachusetts

/s/ Olga Kogan

Olga Kogan (*admitted pro hac vice*)

New York State Office of the Attorney

General

28 Liberty Street, 20th Floor

New York, NY 10005

Telephone: (212) 416-8262

Email: olga.kogan@ag.ny.gov

Attorney for Plaintiff State of New York

/s/ C. William Margrabe

C. William Margrabe (*admitted pro hac vice*)

Office of the Attorney General

400 6th Street NW, Suite 10100
Washington, DC 20001
Telephone: (202) 727-6294
Email: will.margrave@dc.gov

Attorney for Plaintiff District of Columbia

/s/ Schonette J. Walker
Schonette J. Walker (*admitted pro hac vice*)
Gary Honick (*admitted pro hac vice*)
Byron Warren (*admitted pro hac vice*)
Maryland Office of the Attorney General
200 St. Paul Place, 19th Floor
Baltimore, MD 21202
410-576-6470
swalker@oag.state.md.us
ghonick@oag.state.md.us
bwarren@oag.state.md.us

Attorneys for Plaintiff State Maryland

/s/ Komal K. Patel
Komal K. Patel (*admitted pro hac vice*)
Deputy Attorney General
Office of the California Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Tel: (213) 269-6000
Email: Komal.Patel@doj.ca.gov

Attorneys for Plaintiff State of California

/s/ Bryan S. Sanchez
Bryan S. Sanchez (*admitted pro hac vice*)
Ana Atta-Alla (*admitted pro hac vice*)
State of New Jersey - Office of the Attorney
General
Division of Law
124 Halsey Street – 5th Floor
Newark, NJ 07102
Telephone: (973) 648-6835
Bryan.Sanchez@law.njoag.gov
Ana.Atta-Alla@law.njoag.gov

Attorneys for Plaintiff State of New Jersey

/s/ Jessica V. Sutton

Jessica V. Sutton (*admitted pro hac vice*)
Special Deputy Attorney General
North Carolina Department of Justice Post
Office Box 629
Raleigh, NC 27602
Tel: 919-716-6000
E-mail: jsutton2@ncdoj.gov

Attorney for Plaintiff State of North Carolina

/s/ Elizabeth M. Wright

Zachary R. Hafer (MA BBO #569389)
Elizabeth M. Wright (MA BBO #569387)
Cooley LLP
500 Boylston Street, 14th Floor
Boston, MA 02116-3736
Tel: 617-937-2300
ewright@cooley.com
zhafer@cooley.com

Ethan Glass (*Pro Hac Vice*)
Deepti Bansal (*Pro Hac Vice*)
Matt K. Nguyen (*Pro Hac Vice*)
Cooley LLP
1299 Pennsylvania Avenue NW, Suite 700
Washington, DC 20004-2400
Tel: 202-842-7800
Fax: 202-842-7899
eglass@cooley.com
dbansal@cooley.com
mnguyen@cooley.com

Beatriz Mejia (*Pro Hac Vice*)
Cooley LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
Tel: 415-693-2000
Fax: 415-693-2222
bmejia@cooley.com

Joyce Rodriguez-Luna (*Pro Hac Vice*)
Cooley LLP
55 Hudson Yards
New York, NY 10001-2157
Tel: 212 479 6895

Fax: 2124796275
jrodriguez-luna@cooley.com

Jessica K. Delbaum
Leila R. Siddiky
Richard F. Schwed
Shearman & Sterling LLP
599 Lexington Avenue
New York, NY 10022
(212) 848-4000
jessica.delbaum@shearman.com
leila.siddiky@shearman.com
richard.schwed@shearman.com

Michael Mitchell
Shearman & Sterling LLP
401 9th St. NW
Suite 800
Washington, DC 20004
(202) 508-8000
michael.mitchell@shearman.com

Rachel Mossman Zieminski
Shearman & Sterling LLP
2601 Olive St, 17th Floor
Dallas, TX 75201
(214) 271-5777
Rachel.Zieminski@Shearman.com

Ryan A. Shores
David I Gelfand
Cleary Gottlieb Steen & Hamilton LLP
2112 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 974-1876
Fax: (202) 974-1999
rshores@cgsh.com
dgelfand@cgsh.com

Daniel P. Culley
Cleary, Gottlieb, Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
(212) 225-2000
dculley@cgsh.com

Attorneys for JetBlue Airways Corporation

/s/ Samuel N. Rudman

Samuel N. Rudman (MA BBO #698018)
Choate, Hall & Stewart LLP
Two International Place
Boston, MA 02110
Telephone: +1 617 248 4034
srudman@choate.com

/s/ Andrew C. Finch

Andrew C. Finch (*Pro Hac Vice*)
Eyitayo St. Matthew-Daniel (*Pro Hac Vice*)
Jay Cohen (*Pro Hac Vice*)
Jared P. Nagley (*Pro Hac Vice*)
Kate Wald (*Pro Hac Vice*)
Paul, Weiss, Rifkind, Wharton & Garrison
LLP
1285 Avenue of the Americas
New York, NY 10019
Tel: 212-373-3000
Fax: 212-757-3990
afinch@paulweiss.com
tstmatthewdaniel@paulweiss.com
jcohen@paulweiss.com
jnagley@paulweiss.com
kwald@paulweiss.com

Meredith R. Dearborn (*Pro Hac Vice*)
Paul, Weiss, Rifkind, Wharton & Garrison
LLP
535 Mission Street, 24th Floor
San Francisco, CA 94105
Tel: 628-432-5100
Fax: 628-232-3101
mdearborn@paulweiss.com

Attorneys for Defendant
Spirit Airlines, Inc.

Attorneys for Defendant Spirit Airlines, Inc.

LOCAL RULE 7.1(a)(2) CERTIFICATION

I, Elizabeth M. Wright, hereby certify that pursuant to Local Rule 7.1(a)(2), counsel for all Parties conferred in good faith before filing this Motion in an attempt to resolve or narrow this issue. The Parties have agreed to file this Motion jointly.

/s/ Elizabeth M. Wright

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 11th day of September, 2023, the foregoing document was filed through the ECF system and will be sent electronically to the registered participants on the Notice of Electronic Filing and paper copies will be sent to any non-registered participants.

/s/ Elizabeth M. Wright
Elizabeth M. Wright